CF0000060066

(2)

Division Bench (Criminal)

समक्ष माननीय उच्च न्यायालय ,जबलपुर मध्य प्रदेश

क्रिमनल अपील नंबर: 3057 /1998

अपीलार्थी:- रोशन साहू आत्मज रामसिंह साहू उम्र 22 वर्ष
(जेल में) निवासी-अश्वनी नगर थाना पुरानी बस्ती
रायपुर (म0प्र0)

वि रू द्ध

प्रत्यर्थी :- म0 प्र0 शासन

Filed on 9.12.98
by Sh. A.K. Nigam
Advocate

अपील अंतर्गत धारा 374(2) दंड प्रक्रिया संहिता

(37) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 3057/1998

Roshan Sahu

Vs.

State of M.P. (Now Chhattisgarh)

Judgment for consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge

06-10-2005

Hon'ble Shri Justice L.C. Bhadoo

I agree

Sd/-
L.C.BHADOO
Judge

07 -10-2005

Post for 07 **-10-2005**

Sd/-
Dilip Raosaheb Deshmukh
Judge

06 -10-2005

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 3057/1998

Roshan Sahu

Vs.

State of M.P. (Now Chhattisgarh)

Coram :-HON'BLE SHRI JUSTICE L.C.BHADOO &
HON'BLE SHRI JUSTICE DILIP RAOSAHEB DESHMUKH, JJ

Present :- Shri Abhay Tiwari, Counsel for the appellant.
Shri Devesh Verma, Panel Lawyer for the State.

(The following Judgment is delivered on 07-10-2005)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the judgment dated 28-11-1998 delivered by Shri Raghubir Singh, IIIrd Additional Sessions Judge, Raipur in Sessions Case No. 216/1998 whereby the appellant was convicted under Section-302 of the I.P.C. for committing murder of Ajay Gupta on 27-03-1998 at about 10.30 P.M. near Rahul Pan Palace, Moudaha Para, Raipur and was sentenced to undergo imprisonment for life and to pay a fine of Rs. 200/- and in default of payment of fine to undergo additional rigorous imprisonment for one month.

2. It is not disputed that the deceased Ajay Gupta, Amar Gupta and Neelesh Gupta are the sons and Sita Gupta PW-6 is the daughter of Budhsen Gupta PW-2.

3. The prosecution story is that the appellant Roshan Sahu had an eye over Sita Gupta PW-6 and use to chase and tease her frequently. In March-1998, on the day next after Holi at about 8 P.M., the appellant

in a drunken state came to the house of Budhasen Gupta and filthily abusing them said that he would forcibly take away Sita Gupta. This annoyed Amar Gupta PW-1, his brother Neelesh and friends Jitendra PW-3 and Ashok Sahu who beat him. The appellant went away threatening that he would also kill them one by one. On 27-03-1998 at about 10.30 P.M., the deceased Ajay Gupta who used to sell fruits on a trolley was returning home. On the road going towards Badhai Para, in front of Rahul Pan Palace, the appellant assaulted him with a sharp knife on the left side of chest. Naresh Kumar (not examined by the prosecution) informed about the occurrence to Amar Gupta PW-1 who was in a nearby lane. Amar Gupta PW-1 rushed to the spot and saw that the appellant who was running towards Badhai Para with a knife in his hand was being chased by Jeetendra PW-3 and Neelesh. He along with Jitendra PW-3 and his brother Neelesh saw the injured Ajay Gupta bleeding profusely from the stab injury on left side of chest and took him to Life Worth Hospital. Since the Doctor was not present there, the Compounder placed a cotton and bandage on the wound in the chest of Ajay Gupta and thereafter they took Ajay Gupta to Medical College Hospital, Raipur for treatment in an Auto Rickshaw. On way, Ajay Gupta told them that while he was returning home with his Fruit Trolley, near Rahul Pan Palace, the appellant Roshan Sahu assaulted him with a knife on the chest and ran away. Ajay Gupta succumbed to the injury before reaching the Medical College Hospital, Raipur. The Doctor on duty at the Medical College Hospital, Raipur examined Ajay Gupta and declared him brought dead. Information was sent to Police Station- Moudhapara vide Ex.P-16. Dead body of Ajay Gupta was kept at the Mortuary. Station House Officer, Moudhapara

(40)

registered merg intimation vide Ex.P-17 at 11.40 P.M. In the meanwhile, Budhsen Gupta PW-2 along with his wife and daughters ran towards the place of occurrence but till then Ajay Gupta had been taken by Amar Gupta, Neelesh, Jitendra etc. to the hospital.

4. Amar Gupta PW-1 lodged the F.I.R. on 27-03-1998 at 11.30 P.M. vide Ex.P-1 in Police Station-Moudhapara, Raipur. Sub Inspector F.J.Minj PW-10 reached the mortuary of Medical College Hospital, Raipur and prepared inquest memo vide Ex.P-3. He interrogated the appellant Roshan Sahu on the intervening night of 27th & 28th March, 1998 at 00.30 Hrs, and on the basis of his memorandum vide Ex.P-21 seized vide Ex.P-22, one *Rampuri* Spring knife, of the shape of a fish with a brass handle having blood like stains on the blade and a light orange shirt worn by the appellant which had blood like stains. It is alleged that upon arrival of the police, the appellant was hiding in his house and while trying to climb the roof to escape, fell down and sustained injuries on the left foot, left knee, left hip. The appellant was medically examined vide Ex.P-25. The dead body of Ajay Gupta was sent for post-mortem examination on 28-03-1998. Dr. Sanjay Dadu, Assistant Professor, Department of Forensic Medicine, Pt. Jawahar Lal Nehru Medical College, Raipur PW-8, who conducted the autopsy on 28-03-1998 at 11.15 A.M., found the following injuries :-

1. Incised wound on Right leg at lower margin of tibial tuberosity lateral half region size 2 x 0.3 cm transverse, Margins sharply cut angles acute, skin deep.

(41)

2. Incised wound skin deep 5.0 cm above the right knee joint in midline posteriorly size 1.7 x 0.7 cm obliquely vertical. Margins sharply cut. Angles acute. Upperend tilted slightly laterally.
3. Incised wound skin deep on left buttock on upper & outer quadrant situated 4.0 cm below & 4.0 cm medial to left iliac creast size 1.7 x 0.5 cm transverse margins sharply cut, angles acute.
4. Incised wound over base of Left spine of scapula on back size 3 x 1.2 cm transverse with flapping in upper and slicing in lower margin which are sharply cut, skin deep.
5. Multiple friction abrasion on left shoulder lip in an area of 4.0 cm diameter.
6. Stab incised wound on left side of chest laterally on the line of left mid axillary line anterior situated 6.5 cm below the left anterior axillary line size 3x1.5 cm transverse. Margins sharp, anterior end acute, posterior end brooked. It had pierced up to left atrium for a length of 13.0 cm and had cut- left side 3rd rib lower Margin, Intracostal muscle, left lung, pericardium in the track. The direction was from left to Right from lateral to medial, from below upwards & anteriorly. Dr. Sanjay Dadu PW-8 opined that death was due to shock and hemorrhage as a result of stab injury on left side of the chest. The injury was caused by hard, sharp penetrating single edged object and homicidal in nature and was sufficient to cause death in ordinary course of nature. The *Rampuri* Spring knife seized from the appellant vide Ex.P-22 was examined by Dr. Sanjay Dadu who opined vide report Ex.P-13 & Ex.P-14 that the injuries sustained by Ajay Gupta could be caused by the said knife. He also drew a sketch of the knife vide Ex.P-14 and found blood like stains on it. The said

(42)

knife was sealed. All the articles mentioned above were sent for chemical analysis to the Forensic Science Laboratory, Raipur which opined vide report Ex.P-15 that blood stains were present on the knife and clothes seized from the appellant on 28-03-1998. After completion of investigation, the appellant was prosecuted under Section-302 of the I.P.C.

5. The appellant abjured the guilt, pleaded innocence and false implication and did not lead any evidence in defence. The prosecution examined as many as 11 witnesses. The trial Judge relying upon the testimony of Amar Gupta PW-1, Budhsen Gupta PW-2, Jitendra PW-3, Sita Gupta PW-6, Dr. Sanjay Dadu PW-8, F.J. Minj, Sub-inspector PW-10 and Sub-inspector Bahadur Singh PW-9 held that the appellant had the motive to kill Ajay Gupta and had intentionally caused the death of Ajay Gupta on the night of 27-03-1998 by stabbing with the knife on the left side of chest. The trial Judge accordingly convicted the appellant under Section-302 of the I.P.C. and sentenced him as aforesaid in Para-1.

6. Learned counsel for the appellant has mainly contended that there was no legal and reliable evidence on record to bring home the guilt of the appellant under Section-302 of the I.P.C. beyond all reasonable doubt. It was argued that the evidence relating to oral dying declaration made by the deceased Ajay Gupta was wholly unreliable. It was contended that Amar Gupta PW-1, Budhsen Gupta PW-2, Jitendra PW-3 and Sita Gupta PW-6 were highly interested witnesses, who were inimical to the appellant and could not be relied upon for want of independent corroboration. It was also contended that

in the absence of the report of serologist, the prosecution had failed to prove the presence of human blood on the clothes and knife seized from the appellant. On the other hand, learned counsel for the State argued in support of the impugned judgment and contended that the evidence led by the prosecution established beyond doubt that the appellant who had the motive to kill Ajay Gupta, had intentionally caused his death by assaulting him with a knife on the left side of chest on the night of 27-03-1998.

7. We have considered the rival contentions and have also minutely perused the record of Sessions Case No. 216/1998. F.I.R. Ex. P-1 lodged by Amar Gupta PW-1 shows that while he was in the lane in front of his house, his neighbour Naresh Sahu had informed him that Roshan Sahu had assaulted his brother by a knife and on this information he immediately reached the spot and saw the appellant running towards Badhai Para with a knife in his hand. The spot map Ex.P-20 prepared by F.J.Minj, Sub-Inspector PW-10 shows that the place of occurrence is situated on the main road going from Rathore Chowk to Badhai Para and was situated in front of Rahul Pan Palace. On both sides of road near the place of occurrence there are shops. However, considering the time of occurrence the shops must have been closed. The evidence led by the prosecution does not show that Rahul Pan Palace was open at the time of occurrence.

8. Amar Gupta PW-1 has stated that at about 10.30 P.M. on 27-03-1998 while he was in the lane, his neighbour Naresh Sahu informed him that the appellant Roshan Sahu stabbed his brother Ajay Gupta by a knife and was running towards Badhai

Para. He immediately reached near Ajay Gupta and saw that the appellant Roshan Sahu was running towards Badhai Para with a knife in his hand. In cross-examination, he has stated that when he saw Roshan Sahu running away with a knife, Jeetendra PW-3 and Neelesh were chasing Roshan and he saw that Ajay had sustained a wound in the left rib and was bleeding. When Jitendra and Neelesh could not catch hold of Roshan Sahu he along with Naresh, Neelesh & Jeetendra lifted Ajay Gupta and took him to Lifeworth Hospital situated nearby, where the Compounder gave them cotton and bandage and asked them to take Ajay Gupta to the Medical College Hospital, Raipur. Thereafter, they took Ajay Gupta in an Auto Trolley to the Medical College Hospital, Raipur and on way he asked Ajay Gupta as to how this had happened. Ajay Gupta told him that while he was returning from Jawahar Nagar, Raipur, Roshan assaulted him in the left rib by a knife.

9. The testimony of Amar Gupta PW-1 is fully corroborated by Jeetendra PW-3 who has stated that while he was returning with Neelesh from the Pan shop of one Arun situated in Badhai Para, he saw that Roshan was assaulting Ajay Gupta by a knife near Rahul Pan Palace whereupon they went towards him and chased him till Badhai Para but Roshan threatened to assault them by a knife whereupon they returned to Ajay Gupta and saw that Ajay Gupta had an injury on the left side of chest and was bleeding profusely. From the spot map Ex.P-20, it appears plausible that Jeetendra PW-3 would have seen the appellant assaulting Ajay Gupta by a knife, since he was going from Badhai Para Road towards Rahul Pan Palace. Jeetendra PW-3 has also stated that while Ajay Gupta was being taken to the hospital Amar

Gupta PW-1 had asked him about the incident whereupon Ajay Gupta told him that Roshan had assaulted him by a knife. This fact also finds place in the prompt F.I.R. lodged by Amar Gupta PW-1 in Police Station-Moudhapara, Raipur vide Ex.P-1. The testimony of Amar Gupta PW-1 and Jeetendra PW-3 is corroborated fully by the F.I.R. Ex.P-1. The medical evidence of Dr. Sanjay Dadu PW-8 which has been referred by us in para-4 (supra) leaves no room for any doubt that Ajay Gupta had sustained injuries by a sharp object and death of Ajay Gupta was due to excessive bleeding as a result of stab wound in the left side of chest.

10. Sub Inspector F.J. Minj PW-10 has testified that at the instance of the appellant Roshan Sahu he had seized vide Ex.P-22, a knife and blood stained shirt from the house of the appellant which articles were sent by him to Dr. Sanjay Dadu PW-8 for examination. Dr. Sanjay Dadu PW-8 has stated that the injuries sustained by Ajay gupta could have been inflicted by the knife which was sent for examination. The diagram Ex.P-14 drawn by Dr. Sanjay Dadu PW-8 shows that it was a deadly weapon. The report of Forensic Science Laboratory Ex.P-15 established that the knife and the clothes seized from the appellant had blood stains on it. The knife and blood stained shirt were seized from the appellant, on the night of occurrence itself. No explanation whatsoever has been offered by the appellant in this regard. Budhsen Gupta PW-2 has also stated that on 27-03-1998 at 10 P.M. he received information that Ajay gupta was stabbed with a knife by Roshan Sahu whereupon he rushed with his wife and daughters to the place of occurrence but before he reached the place of occurrence, his son Amar Gupta had been taken by Ajay Gupta to the hospital. In cross-examination

(46)

Amar Gupta PW-1 has categorically stated that he had seen Roshan running towards Badhai Para with a knife and Jeetendra & Neelesh were chasing him. Nothing has been elicited in the cross-examination of Amar Gupta PW-1, Jitendra PW-3 which would rebut their testimony or create a suspicion regarding their presence at the scene of occurrence. The F.I.R. promptly lodged by Amar Gupta PW-1 fully corroborates their testimony. The medical evidence also fully establishes that the death of Ajay Gupta was homicidal and caused due to stab wound in the left side of chest by a sharp object. The testimony of Jeetendra PW-3 is consistent with the testimony of Amar Gupta PW-1. His presence at the scene of occurrence is natural. His name also finds place in the F.I.R. lodged by Amar Gupta PW-1. The testimony of Jeetendra PW-3 inspires confidence and was rightly relied upon by the Trial Judge.

11. We are unable to accept the argument advanced by the learned counsel for the appellants that the testimony of Amar Gupta P.W.1, Budhsen Gupta P.W.2 and Jitendra P.W.3 cannot be relied since they were highly interested witnesses. It is true that on 14.03.1998 an incident had taken place in which Amar Gupta P.W.1, Jitendra P.W.3, the deceased Ajay Gupta and Neelesh had beaten the appellant who in a drunken state had spoken offending words for Sita Gupta. It is also true that Amar Gupta P.W.1 and Budhsen Gupta P.W.2 being the brother and father of the deceased and Jitendra P.W.3 being the friend of the deceased were interested witnesses yet it is now well settled that the evidence of a witness cannot be discarded merely on the ground that he is an interested witness, if his testimony is found credible. In *Seeman vs. State By Inspector of Police* reported in **2005 A.I.R. SCW 2705**, the Apex Court held that a

witness could be a relative but that does not mean to reject his statement in totality. The relevant portion is as under:-

> ".....The witness could be a relative but that does not mean to reject his statement in totality. In such a case, it is the paramount duty of the court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested sole witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested sole witness."

So far as the non-examination of Naresh Kumar, the first informant of the occurrence is concerned, as held in *Seeman* (supra) the non-production of one independent witness who has been named in the F.I.R. by itself cannot be taken to be a circumstance to discredit the evidence of the interested witnesses and disbelieve the prosecution case. It is well settled that it is the quality of the evidence and not the quantity which is required to be judged by the Court to place credence on the statement. Viewed from this perspective as already observed by us, we find that the testimony of Amar Gupta P.W.1 and Jitendra P.W.3 is trustworthy and consistent, their presence at the place of occurrence is natural and also finds corroboration by the prompt F.I.R. lodged by Amar Gupta P.W.1.

12. Budhsen Gupta PW-2 has stated that on 14-03-1998, the appellant came in a drunken state and said that he would take away his elder daughter Sita Gupta PW-6 whereupon the appellant was beaten by his children. Thereafter, the appellant went away after threatening them. Sita Gupta PW-6 has also stated that Roshan Sahu used to tease her every day while she went to work at the Natraj Hotel and also used to

chase her. Her testimony shows that the appellant had an eye upon her and had also said that he would kidnap her or disfigure her face. It also shows that the appellant wanted to apply colour during Holi on the face of Sita Gupta. The F.I.R. Ex.P-1 mentions that on the day next after Holi, the appellant Roshan Sahu who was in a drunken state had said that one day he would take away Sita Gupta PW-6 and was beaten by Amar Gupta, Neelesh Gupta, the deceased Ajay Gupta and Jitendra PW-3. Testimony of Sita Gupta PW-6 shows that her brothers had beaten the appellant Roshan whereupon the appellant had threatened to kill them. This occurrence is alleged to have taken place on 14th March of 1998 i.e. 13 days prior to the occurrence. The appellant thus had the motive to kill Ajay Gupta in retaliation to the incident which took place on 14th March, 1998.

13. From the above discussion, it is clear that the prosecution has established the following points beyond doubt :-

A. Jeetendra PW-3 had seen the appellant Roshan Sahu assaulting Ajay Gupta with a knife near Rahul Pan Palace.

B. Jeetendra PW-3 chased Roshan Sahu who threatened to assault him by a knife

C. Ajay Gupta had made an oral dying declaration to Amar Gupta PW-1 that Roshan had assaulted him with a knife.

D. Dr. Sanjay Dadu PW-8 found that Ajay Gupta had sustained several incised wound on his body and his death was caused due to excessive bleeding as a result of stab wound on the left side of chest.

E. Sub-Inspector F.J.Minj PW-10 had, soon after the F.I.R. was lodged, seized a knife and clothes having blood like stains from the appellant.

(19)

F. Dr. Sanjay Dadu PW-8 had opined that the injuries sustained by Ajay Gupta could have been caused by a knife which was seized from the appellant immediately after the occurrence at 1 A.M and which had blood like stains.

G. The report of Forensic Science Laboratory Ex.P-15 established that the knife and clothes seized from the appellant immediately after the occurrence had blood stains for which no explanation was offered by the appellant.

H. The appellant had the motive to kill Ajay Gupta.

14. From the abovementioned established facts, in our considered opinion the prosecution has successfully established the guilt of the appellant under Section-302 of the I.P.C. for committing murder of Ajay Gupta on the night of 27-03-1998. The injuries sustained by Ajay Gupta, the weapon with which the injuries were caused and the stab wound at the left side of chest which had pierced up to the left atrium up to a length of 13 cm and had also cut the left side of third rib lower margin, intracostal muscle, left lung and pericardium establishes that the appellant had intentionally caused the death of Ajay Gupta by assaulting him with a knife. We, therefore uphold the conviction of the appellant under Section-302 of the I.P.C. and the sentence awarded thereunder by the Trial Court.

15. In the result, there is no substance in this appeal which is accordingly dismissed.

Sd/- L.C.BHADOO Judge 07th-10-2005	Sd/- Dilip Raosaheb Deshmukh Judge 07-10-2005

Satish